

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

JW The JOHN WILSON GROUP, (parent  
name, abbrev. NFCompany),

Petitioner,

v.

CITY OF TUMWATER AND THURSTON  
REGIONAL PLANNING COUNCIL,

Respondents.

Case No. 13-2-0021

**ORDER OF DISMISSAL**

On October 16, 2013, a Petition for Review (PFR) was filed by Petitioners identifying themselves as "JW The John Wilson Group, (parent name, abbrev. NFCompany)," hereinafter referred to as Wilson. The PFR raises concerns regarding what appear to the Board to be preliminary discussions by the City of Tumwater involving the possible design and construction of "roundabouts" on what the PFR references as Old Hwy 99, a project which is apparently entitled the "Capital Boulevard Corridor Plan".

A review of the PFR fails to disclose any allegation of final action taken by the City. Under these circumstances, it is incumbent upon the Board to consider whether Petitioner Wilson has properly invoked the Board's jurisdiction.<sup>1</sup> The Growth Management Hearings Board is a creature of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication.<sup>2</sup> A party cannot confer jurisdiction; all that a party does is invoke it.

<sup>1</sup> See *Total Outdoor Corp. v. City of Seattle*, Case No. 13-3-0008, Order of Dismissal (September 23, 2013); *William H. Wright v. San Juan County*, Case No. 13-2-0019, Order of Dismissal (July 5, 2013).

<sup>2</sup> *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

1 Statutory requirements must be met before jurisdiction is properly invoked.<sup>3</sup> To invoke the  
2 Board's jurisdiction to review compliance with the Growth Management Act (chapter 36.70A  
3 RCW), a party with standing must comply with the chapter's procedural requirements:

4 a) File a petition for review that includes a detailed statement of issues  
5 presented for resolution by the Board;<sup>4</sup>

6 b) File the petition for review within 60 days after notice of publication  
7 by the City of the adoption of a comprehensive plan, development  
8 regulation, or permanent amendment thereto;<sup>5</sup> and,

9 c) Allege noncompliance with the requirements of the GMA.<sup>6</sup>

10 In this instance, any challenge would necessarily have to follow the final decision [the  
11 governmental action] of the City of Tumwater. The PFR includes no allegation of the  
12 adoption of an ordinance, resolution or other documentation evidencing final governmental  
13 action, nor was any such enactment attached to the PFR.<sup>7</sup> The PFR instead refers to a  
14 process the "end result [of which] will be designing and needlessly constructing multiple ill-  
15 advised road improvements"-implying final action is yet to come. The PFR also fails to  
16 include the required detailed statement of issues. At best there is the suggestion the public  
17 participation allowed to date has been inadequate. Finally, the PFR does not allege a  
18 specific GMA violation; in fact, there is no reference to any GMA statute whatsoever.

19 Under the facts and circumstances presented to the Board, there is but one  
20 conclusion: Wilson has failed to properly invoke the Board's jurisdiction.

21 The Board is authorized by statute to dismiss a petition for review if the petition is  
22 frivolous.<sup>8</sup> The Board must dismiss a petition when the Board determines jurisdiction was  
23 not properly invoked, since the Board has no power to adjudicate that particular case.<sup>9</sup>

24 Consequently, the Board finds and concludes as follows: (1) there was no final,  
25 appealable decision made by the City of Tumwater, (2) the PFR on its face does not meet  
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28 <sup>3</sup> *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003).

29 <sup>4</sup> RCW 36.70A.290(1).

30 <sup>5</sup> RCW 36.70A.290(2).

31 <sup>6</sup> RCW 36.70A.280(1)(a); The provisions of RCW 36.70A.280(1)(b)-(e) are not relevant.

32 <sup>7</sup> Future, final governmental action may possibly trigger a 60 day appeal period.

<sup>8</sup> RCW 36.70A.290(3).

<sup>9</sup> See *Crosby v. Spokane County*, 137 Wn.2d 296, 301 (1999) [If a court lacks jurisdiction over a proceeding, it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*, 130 Wn.2d 189, 196 (1996).

1 the jurisdictional requirements of the GMA, (3) the petition is frivolous, and (4) Petitioner  
2 has failed to invoke the Board's jurisdiction to consider a GMA violation.

3  
4 **ORDER**

5 Based on the foregoing, the Petition for Review filed by JW The John Wilson Group,  
6 (parent name, abbrev. NFCompany), Case No. 13-2-0021, is hereby dismissed.

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8 DATED this 28th day of October, 2013.

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12 William Roehl, Presiding Officer

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15 Nina Carter, Board Member

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18 Charles Mosher, Board Member

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21 Note: This is a final decision and order of the Growth Management Hearings Board issued  
22 pursuant to RCW 36.70A.300.<sup>10</sup>

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30 <sup>10</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final  
32 decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW  
34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.

It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth  
Management Hearings Board is not authorized to provide legal advice.